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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 9th December, 1983:—

I

BILL NO. XIX OF 1983

A Bill to provide for reservation of posts in Services in connection with the affairs of the Union and of seats in educational institutions in favour of the backward class citizens.

BE it enacted by Parliament in the Thirty-fourth Year of the Republic of India as follows:—

1. This Act may be called the Reservation of Posts in the Central Government Services and seats in the educational institutions for the Backward Classes Act, 1983. Short title.

2. Twenty-seven per cent. of appointments to the Services and posts in the Government of India and the Public Sector Undertakings controlled by that Government shall be reserved for the candidates belonging to the Backward Classes. Reservation of jobs for the Backward Classes.

3. The quota of reservation mentioned in section 2 shall be filled up generally according to the following scheme: Over-all Scheme of Reservation.

(i) candidates belonging to the Backward Classes recruited on the basis of merit in an open competitive examination shall not be adjusted against the reservation quota of twenty-seven per cent.;

(*ii*) the reservations under section 2 shall be applicable to promotions at all levels;

(*iii*) reserved quota remaining unfilled shall be carried forward for a period of three years.

Reservation of seats in educational institutions for the Backward Classes.

4. Twenty-seven per cent. of seats in the Universities, and other institutions and agencies covered by Entries 63, 64, 65 and 66 of List 1 of the Constitution and those educational institutions or agencies which receive financial assistance from the Government of India in one form or the other shall be reserved for candidates belonging to the Backward Classes.

Government of India to specify Backward Classes.

5. The Government of India shall specify, from time to time, by notification in the Official Gazette, the class or classes of citizens who are to be treated as socially and educationally Backward Classes for the purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

Pandit Jawaharlal Nehru, in his address to the Congress Parliamentary Party on December 2, 1954 had stated as follows:

> "We talk about casteism and we condemn it as we should. But the fact remains that half a dozen or may be 10, so-called superior castes dominate the Indian scene among the Hindus. There is no doubt about it. And if I talk about the removal of casteism don't understand by that that I want to perpetuate the present classification, some people at the top and other people at the bottom. If we don't equalise or tend to equalise, undoubtedly, casteism will flourish in a most dangerous way".

2. Even-today the monopoly in education and the consequent predominant representation in the Government services by these "superior castes" has not changed. This will be evident from the fact that the other Backward Classes constitute only 12.55 per cent of the total number of Central Government employees whereas their aggregate population is 52 per cent and their representation in Class I jobs is only 4.69 per cent, *i.e.*, less than 1|10th of their proportion to the country's total population.

3. The principle of reservations may be anathema to advocates of the principle of equality. But caste *dharma* has subjected the Backward Classes to calculated oppression and habitual submission for many Centuries. It would be impossible to raise their standard if the doctrine of equal opportunity is strictly enforced. It is a dictum of social justice that there is equality only among equals. They need the adventitious aids if they are to enter the open field of competition until such time when they can stand on their own legs. Reservation is one such aid.

4. Who are the "backward classes of citizens"? It is not defined in the Constitution. But they are treated as being similar to the Scheduled Castes and the Scheduled Tribes which have been defined and known to be backward. Those other classes of citizens as well who are equally or may be somewhat less backward than the Scheduled Castes and the Scheduled Tribes although no stigmatized by untouchability have been called "Other Backward Classes" and it was thought that some special provisions should be made for the advancement of the other Backward Classes as well. *Therefore when the other Backward Classes demand reservation in the Public Services and Educational Institutions it should not be construed as mercy petitions but as the legitimate claim of their constitutional rights, as our Constitution has provided them with special provisions necessary to remedy their special inequalities.*

5. Article 16(4) provides for the reservation of public services in favour of any backward class of citizens who are inadequately represented This Article does not specifically mention about the Scheduled Castes and the

Scheduled Tribes. But the Courts have held that the term "backward classes" used in that Article would naturally include them. Originally there was no reservation in educational institutions. The verdict of Supreme Court invalidated the Madras reservations in educational institutions and by implication barred all preferential treatment outside the sphere of Government employment. Because of public agitations in Madras the First Amendment to the Constitution was made in 1951 and Clause (4) in Article 15 was included to make special provision for the advancement of any "socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes". It is now settled that the expression "Backward Class of Citizens" in Article 16(4) means the same as the expression "any socially and educationally backward class of citizens" in Article 15(4). (*It should be noted that reference to economic backwardness has been advisedly left out of these Articles.*) As these provisions enable protective discrimination abridging to that extent the fundamental right to equality and fundamental right prohibiting discrimination on grounds of religion, race, caste, sex and place of birth, these Articles are considered by the Backward Classes as a Charter of Rights.

6. By Article 340 the President is required to appoint a Commission for the determination of other Backward Classes so as to enable him to specify them under Article 338. The president is yet to specify them in spite of the reports of the two Backward Classes Commissions. But the Courts have held that in the absence of Presidential specification of Backward Classes the State could specify them.

7. Articles 15(4) and 16(4) are common to both Central and State Governments. But in pursuance of those Articles only State Governments and Union territories are implementing reservations in their services and educational institutions, even though the quantum varies. It is unfortunate that the Central Government has so far not taken any positive action in this direction which is considered as a serious lapse. This Bill attempts to fill the gap and give legal force to the important recommendation of the Mandal Commission regarding twenty-seven per cent reservation.

8. It will not be difficult for the Government of India to identify the socially and educationally Backward Classes and notify them for the purposes of this Act. The Mandal Commission has identified them in its Report. Otherwise, the Government may safely adopt the lists of other Backward Classes already drawn up by several State Governments, which are already tested and upheld by the Courts.

Hence this Bill.

MURASOLI MARAN

II

BILL NO. XVIII OF 1983

A Bill further to amend the Representation of the People Act, 1951

BE it enacted by Parliament in the Thirty-fourth Year of the Republic of India as follows:—

1. This Act may be called the Representation of the People (Amendment) Act, 1983. Short title and commencement.

43 of 1951.

2. After section 9A of the Representation of the People Act, 1951 (hereinafter referred to as the principal Act), the following section shall be inserted, namely:— Insertion of new section 9B.

"9B. A person who is deemed to be set up by a political party as a candidate shall be disqualified if he, after having been declared elected, ceases to be a member of that political party, voluntarily or otherwise." Disqualification for ceasing to be a member of a political party.

Explanation.—For the purposes of this Act—

"(*i*) the expression "political party" means any association or body of citizens of India calling itself a political party and registered as such with the Election Commission of India; and

(*ii*) A candidate shall be deemed to be set up by a political party if (*a*) the candidate has made a declaration to that effect in his nomination paper; (*b*) a notice in writing to that effect has, not later than 3 p.m. on the last day of withdrawal of candidature, been delivered to the returning officer of the constituency; and (*c*) the said notice is signed by the President, the Secretary or any other office bearer of the party and the President, Secretary or such other office bearer is authorised by the party to send such notice and the names and specimen signatures of the President, the Secretary or such other office bearer are communicated in advance to the returning officer of the constituency and to the Chief Electoral Officer of the State."

Insertion of new section 10B.

3. After section 10A of the principal Act, the following section shall be inserted, namely:—

Publication of Disqualification.

"10B. If it comes to the notice of the Election Commission that a person is disqualified under section 9B, the Election Commission shall, within ten days, by order published in the Official Gazette, declare him to be disqualified from the date of the Order."

Amendment of section 11.

4. In section 11 of the principal Act, for the brackets, words, figure and letter (except under section 8A), the brackets, words, figures and letters (except under sections 8A and 9B) shall be substituted.

Insertion of new section 33A.

5. After section 33 of the principal Act, the following section shall be inserted, namely:—

Declaration at the time of nomination.

"33A. A candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying whether he contests as a member of a political party or not; and that in case he, after having been elected, ceases to be a member of that political party, he shall be disqualified."

STATEMENT OF OBJECTS AND REASONS

Defection for a consideration is anathema to parliamentary democracy as it vitiates the will of the electors. The politics of India, which is the largest democracy in the world, is inflicted by the canker of defections.

Therefore, to put an end to this evil this Bill proposes to make every candidate who contests an election to declare in his nomination paper whether he contests as a member of a political party or not. He has further to declare that in case he, after having been declared elected, ceases to be a member of that political party, he shall automatically stand disqualified. This Bill seeks to make suitable amendments to that effect in the Representation of the People Act.

MURASOLI MARAN

III

BILL NO. XXVII OF 1983

A Bill to provide for the abolition of caste and religious titles from names.

Short title, extent and commencement.

1. (*1*). This Act may be called the Abolition of Caste and Religious Titles from Names Act, 1983.

(*2*) It extends to the whole of India.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Educational institutions not to require students to state their caste or religion in any forms.

2. No educational institution shall require or provide in any of its Forms prescribed for the purposes of admission grant of scholarship and examination to mention religion or caste of a student.

Offices not to require statement of caste or religion in their Forms.

3. Subject to the provisions of any law for the time being in force, no Government or Semi-Government or any other office or institution or undertaking shall require any employee to mention his caste or religion in any of its form or service document.

STATEMENT OF OBJECTS AND REASONS

In our country, communal, anti-social and divisive forces are raising their head and trying to disintegrate the country by fomenting caste and religious feelings. Communal disturbances have been taking place quite frequently in different parts of the country. This is leading to the weakening of the democratic, secular and national character of our Nation. The aim of achieving national integration in our country can be fulfilled only when a casteless and classless society is established. What is happening today is that a person is required to state his caste or religion in the Forms prescribed by various Government departments, educational institutions, Public Service Commissions, Employment Exchanges, etc. This is evidently not in consonance with our cherished objectives. It is, therefore, necessary to eliminate the requirement of mentioning of caste and religion in any such Forms or other documents.

This Bill is intended to fulfil the said purpose.

ADINARAYANA REDDY

IV

BILL NO. XXIII OF 1983

A Bill further to amend the Code of Criminal Procedure, 1973.

BE it enacted by Parliament in the Thirty-fourth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Code of Criminal Procedure (Amendment) Act, 1983.

Amendment of section 197.

2. In section 197 of the Code of Criminal Procedure, 1973 after sub-section (2) the following sub-section shall be inserted, namely:— 2 of 1974.

(*2A*) Every application for previous sanction referred to in sub-section (*1*) shall contain the specific allegations, but not the evidence, and the specific provisions of law on the basis of which prosecution is proposed to be instituted and every such application shall be disposed of within a period of sixty days by the competent authority from the date of its submission together with the reasons for granting or refusing the sanction, as the case may be:

Provided that the previous sanction shall be deemed to have been granted in case the authority fails to take a decision and communicate it within the said period of sixy days.

STATEMENT OF OBJECTS REASONS

The object of the proposed amendment to the Code of Criminal Procedure is to cast a reciprocal obligation on the State and its functionaries *vis-a-vis* a citizen under section 197 of the Code of Criminal Procedure and to eliminate arbitrariness in dealing with the requests made under that section. It is felt that there is need for better and direct accountability of the executive towards a citizen.

Hence, this Bill.

DR. BHAI MAHAVIR.

V

BILL NO. XXVI OF 1983

A Bill to provide for the exclusion from and the inclusion in, the lists of Scheduled Castes and Scheduled Tribes, of certain castes and tribes

BE it enacted by Parliament in the Thirty-fourth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1983.

Amendment of the Constitution (Scheduled Castes) Order, 1950.

2 In the Constitution (Scheduled Castes) Order 1950, in the Schedule,—

(*a*) under the heading "PART V.—*Haryana*", the following entries shall be omitted, namely:—

'3. Bangali

4. Barar, Burar or Berar

5. Bauria or Bawaria

18. Gandhila or Gandil Gondola

25. Nat

32. Sansi, Bhedkut or Manesh';

(*b*) under the heading "PART VI—*Himachal Pradesh*", the following entries shall be omitted, namely:—

'5. Bangali

9. Barar, Burar, Berar

11. Bauria or Bawaria

27. Gandhila, Gandil Gondola

40. Nat

48. Sansi, Bhedkut or Manesh'; and

(*c*) under the heading "PART XIV.—*Punjab*", the following entries shall be omitted, namely:—

3. Bangali

4. Barar, Burar or Berar

6. Bauria or Bawaria

18. Gandhila or Gandil Gondola

25. Nat

32. Sansi, Bhedkut or Manesh'.

Amendment of the Constitution (Scheduled Tribes) Order, 1950.

3. In the Constitution (Scheduled Tribes) Order, 1950, in the Schedule,—

(*a*) after the heading "PART IV.—*Gujarat*" and the entries thereunder the following shall be inserted, namely:—

'PART IV—A.—*Haryana*—

Throughout the State:—

1. Bangali

2. Barar, Burar or Berar

3. Bauria or Bawaria

4. Gandhila or Gandil Gondola

5. Nat

6. Sansi, Bhedkut, Gadaria or Manesh'.

(*b*) under the heading "PART V.—*Himachal Pradesh*", for entries 1 to 8 the following entries shall be substituted, namely:—

1. Bangali

2. Barar, Burar or Berar

3. Bauria or Bawaria

4. Bhot, Bodh

5. Gaddi

6. Gujjar

7. Jad, Lamba, Khampa

8. Kanura, Kinnara

9. Lahaula

10. Nat

950.

11. Pangwala

12. Sansi, Bhedkut, Gadaria or Manesh

13. Swangla;

(c) after the heading "PART XII.—*Orissa*" and entries thereunder, the following shall be inserted, namely:—

'PART XII-A.—*Punjab*—

Throughout the State:—

1. Bangali

2. Barar, Burar or Berar

3. Bauria or Bawaria

4. Gandhila or Gandil Gondola

5. Nat

6. Sansi, Bhedkut, Gadaria or Manesh;

Amendment of Constitution (Scheduled Castes) (Union Territories) Order, 1951.

4. In the Constitution (Scheduled Castes) (Union Territories) Order, 1951, in the Schedule,—

(*a*) Under the heading "PART I.—*Delhi*", the following entries shall be omitted, namely:—

'6. Bawaria

29. Nat (Rana)

32. Sansi or Bhedkut';

(*b*) under the heading "PART II.—*Chandigarh*", the following entries shall be omitted, namely:—

'2. Bangali

3. Barar, Burar or Berar

5. Bauria or Bawaria

17. Gandhila or Gandil Gondola

24. Nat

32. Sansi, Bhedkut or Mahesh'.

Amendment of Constitution (Scheduled Tribes) (Union Territories) Order, 1951.

5. In the Constitution (Scheduled Tribes) (Union Territories) Order, 1951, after "PART IV.—*Arunachal Pradesh*", the following shall be inserted namely:—

"PART V—*Chandigarh*—

Throughout the Union territory:—

1. Bangali

2. Barar, Burar or Berar

3. Bauria or Bawaria

4. Gandhila or Gandil Gondola

5. Nat

6. Sansi, Bhedkut Gadaria or Manesh".

"PART VI.—*Delhi*:—

Throughout the Union territory:—

1. Bangali
2. Barar, Burar or Berar
3. Bauria or Bawaria
4 Gandhila or Gandil Gondola
5. Nat
6. Sansi, Bhedkut, Gadaria or Manesh"

STATEMENT OF OBJECTS AND REASONS

Vimukta Jatis were earlier known as criminal tribes during the British regime and an Act was passed by the then British regime, known as the Criminal Tribes Act, 1911. This Act was subsequently amended in 1924 and certain tribes were declared as criminal tribes. However, their ancestors were in fact Rajputs and they migrated from Mewar to different parts of the country in the 16th Century and acquired nomadic character. These tribes did not cooperate with the British regime and because of the nomadic character became educationally, socially and economically backward.

In 1952 the Criminal Tribes Act, 1924 was repealed and the Criminal tribes were denotified and they came to be known as Vimukta Jatis. They were treated as Scheduled Castes and were included in the Constitution (Scheduled Castes) Order, 1950 made by the President under article 342 of the Constitution, in Punjab and Himachal Pradesh.

But the communities coming under the Vimukta Jatis (such as Bangali, Berar, Bauria, Gadaria, Nat etc.) do not have the characteristics of the Scheduled Castes and could not have been included in the Order referred to above. They being part and parcel of the Scheduled Tribes should have been included in the Constitution (Scheduled Tribes) Order, 1950.

The High Court of Punjab and Haryana by its recent judgement in Writ Petition No. 132 of 1975 (Buta Ram Azad *Vs* Union of India) expressed the view that the Vimukta Jatis have been wrongly included in the list of the Scheduled Castes and that they should have been included in the list of Scheduled Tribes. The Court observed that these Jatis should be deleted from the list of Scheduled Castes and should be included in the list of the Scheduled Tribes.

It is important to note that all the Commissions and Committees of enquiries appointed from time to time by the Government of India have recommended that the 193 Rebel tribes as well as other down-trodden of India should be given the special treatment by including them in the list of Scheduled Tribes so that the weaker sections and these crores of people get their due share in every sphere of life.

Hence this Bill.

M. BASAVARAJU

VI

BILL NO. XXX OF 1983

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Thirty-fourth Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 1983. Short title.

2. In article 85 of the Constitution,— Amendment of article 85.

(*i*) in clause (1), for the words "six months" the words "three months" shall be substituted; and

(*ii*) after clause (1), the following proviso shall be inserted, namely:—

"Provided that each House of Parliament shall remain in session and transact business for not less than one hundred and fifty days in a year."

3. After article 123, the following article shall be inserted, namely:— Insertion of new article 123A.

"123A. Notwithstanding anything contained in any provision of the Constitution, no Ordinance shall be repromulgated nor any Ordinance reproducing substantially the provisions of the repealed or the lapsed Ordinance shall be promulgated within a period of five years from the date of the promulgation of the earlier Ordinance." Ordinances not to be repromulgated within a specified period.

Amendment of article 174.

4. In article 174 of the Constitution,—

(*i*) in clause (1), for the words "six months" the words "three months" shall be substituted; and

(*ii*) after clause (1), the following proviso shall be inserted, namely:

"Provided that the House or each House of the Legislature of the State shall remain in session and transact business for not less than one hundred and twenty-days in a year.

Insertion of new article 213A.

5. After article 213 of the Constitution, the following article shall be inserted, namely:—

Ordinances not to be re-promulgated within a specified period.

"213A. Notwithstanding anything contained in any provision of the Constitution, no Ordinance shall be re-promulgated nor any Ordinance reproducing substantially the provisions of the repealed or the lapsed Ordinance shall be promulgated within a period of five years from the date of the promulgation of the earlier Ordinance."

STATEMENT OF OBJECTS AND REASONS

Parliament at the Centre and the Legislatures in the States are the law making bodies in our country. To cope with the extraordinary circumstances necessitating immediate legislation during the periods of recess of these legislative bodies, provisions have been made in articles 123 and 213 of the Constitution for the promulgation of Ordinances by the President and the Governors, respectively, purely as a temporary measure. An Ordinance promulgated under these articles has the same force and effect as an Act passed by Parliament or the Legislature of a State. Obviously, the intention of the framers of the Constitution is that the power to promulgate Ordinances should be exercised judiciously and only in extraordinary circumstances and for extraordinary purposes.

A study by the Gokhale Institute of Politics and Economics, Poona, however, reveals that the power conferred by article 213 of the Constitution has been grossly misused The State of Bihar has been cited as a typical example where this article has been unfairly, unreasonably and possibly unconstitutionally used. On a single day the 18th January, 1976, no less than fifty-six Ordinances were promulgated there.

In practice, an Ordinance can remain in force for more than seven and a half month period but, since 1974 if not earlier, in Bihar, irrespective of the parties in power there, this device of re-promulgation of an Ordinance without even bothering to bring it before the Legislature, has been resorted to by successive Governments.

Dr. D. C. Wadhwa of the above Institute, in his book "Re-Promulgation of Ordinances. A Fraud on the Constitution" has narrated a harrowing story of the monumental fraud being perpetrated on the Constitution in Bihar. The State is being literally run by Governor's Ordinances rather than legislature's laws. There is, to say the least, an Ordinance Raj. The tally to take the period between 1971 and 1981, has, in accordance with the Bihar Gazette, been like this—in (1971)—Ordinances 113: Acts 8; (1972) 175:5; (1973) 127:13; (1974) 184:16; (1975) 215:28; (1976) 220:30; (1977) 270:26; (1978) 114:13; (1979) 171:10; (1980) 166:4; and (1981) 203:10. One of the instances of re-promulgation of Ordinances cited in the book is of the Bihar Sugarcane (Regulation of Supply and Purchase) Ordinance which was first promulgated on January 13, 1968 and re-promulgated thereafter as many as 38 times until December 31, 1981, covering a span of about 14 years. What was meant to cope with emergency situations has thus been made a general rule of practice.

Another aspect of the situation in Bihar that has been pin-pointed is that no session of the Bihar Legislature since 1967 has ever lasted for anything near 42 days. This is evidently intended to get around or circumvent the constitutional requirement that an Ordinance unless

enacted by the Legislature within six weeks of the commencement of its session would automatically lapse.

This rot or the cancer in the body politic, so to say, is now spreading to other States like Uttar Pradesh, though fortunately, the Union Government has not been affected so far.

It is, therefore, felt that it is time to amend the relevant provisions of the Constitution with a view to putting an end to this dubious practice leading to distortion of the Constitution.

Hence, this Bill.

LADLI MOHAN NIGAM

SUDARSHAN AGARWAL,
Secretary-General.

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